

United States District Court

For The District of Columbia

UNITED STATES OF AMERICA

CRIMINAL COMPLAINT

V.

Stewart David Nozette
DOB: May 20, 1957
PDID:

CASE NUMBER:

09-0565M

(Name and Address of Defendant)

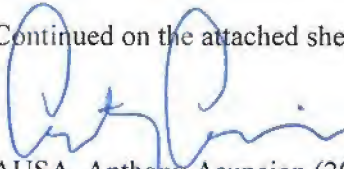
I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about September 16, 2009 and October 1, 2009, in the District of Columbia and elsewhere, the defendant did commit the following criminal offense (Track Statutory Language of Offense):

did, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicate, deliver, or transmit, or attempted to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code, book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, in violation of Title 18 United States Code, § 794.

I further state that I am Special Agent Leslie Martell, Federal Bureau of Investigation, and that this complaint is based on the following facts:

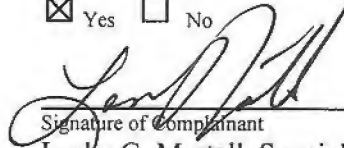
See attached Affidavit and made a part hereof.

Continued on the attached sheet and made a part hereof:



AUSA, Anthony Asuncion (202) 514-6950

☒ Yes ☐ No



Signature of Complainant
Leslie G. Martell, Special Agent
Federal Bureau of Investigation

Sworn to before me and subscribed in my presence,

10/16/09
Date

at

Washington, D.C.
City and State

Deborah A. Robinson
US Magistrate Judge
Name & Title of Judicial Officer


Signature of Judicial Officer

**AFFIDAVIT IN SUPPORT OF A
CRIMINAL COMPLAINT AND ARREST WARRANT**

STEWART DAVID NOZETTE

DOB: 05/20/1957

Social Security Number: 335-40-7887

I, Leslie G. Martell, being first duly sworn, hereby depose and state as follows:

1. I am a Special Agent with the Federal Bureau of Investigation (FBI) assigned to a Counterintelligence squad at the FBI's Washington Field Office (WFO) in Washington, D.C. I have been employed by the FBI since June 2000, and have received training at the FBI Academy at Quantico, Virginia, specific to counterintelligence and espionage investigations. I am presently tasked to work with other federal agencies to investigate counterintelligence matters, including investigations of individuals suspected of unlawfully gathering or transmitting classified information and unlawfully acting as agents of foreign governments. I have had experience in investigations involving individuals who use their positions of trust within the U.S. Government to illegally access or transmit classified information. Based on my experience and training, I am familiar with efforts used by foreign governments to collect classified U.S. Government information from their agents. I am also familiar with the classification system used to protect U.S. national defense information and the rules that govern the transportation, storage, and use of such information. Before joining the FBI, I was admitted to the North Carolina state bar in 1996, and practiced law for approximately four years.

2. As a federal agent, I am authorized to investigate violations of laws of the United States and to execute warrants issued under the authority of the United States.

3. The information in this affidavit is based on my personal knowledge and on information provided to me by other law enforcement and counterintelligence investigators during the course of this investigation. Unless otherwise noted, information provided to me by other law enforcement personnel does not necessarily reflect my personal observations or investigation but rather has been passed to me by individuals with first hand knowledge. Since this affidavit is being submitted for the limited purpose of establishing probable cause in support of a complaint and arrest warrant, I have not included each and every fact known to me concerning this investigation.

4. This affidavit is submitted in support of an application for a complaint and arrest warrant charging STEWART DAVID NOZETTE (NOZETTE) with attempt to communicate, deliver, and transmit United States national defense information to the Government of the State of Israel in violation of Title 18, United States Code (U.S.C.), Section 794.

5. Under 18 U.S.C. § 794(a) it is a federal criminal offense to attempt to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation.

Background Information

6. "Classified" information is defined in Executive Order 12958, as amended by Executive Order 13292, as information in any form that: (1) is owned by, produced by or for, or

is under the control of the United States government; (2) falls within one or more of the categories set forth in the Order; and (3) is classified by an original classification authority who determines that its unauthorized disclosure reasonably could be expected to result in damage to the national security.

7. Where such unauthorized disclosure could reasonably result in “serious” damage to the national security, the information may be classified as “SECRET” and must be properly safeguarded. Where such damage could reasonably result in “exceptionally grave” damage to the national security, the information may be classified as “TOP SECRET” and must be properly safeguarded. Access to classified information at any level may be further restricted through compartmentation in “SENSITIVE COMPARTMENTED INFORMATION” (SCI) categories. SCI is classified information concerning or derived from intelligence sources, methods or analytical processes which must be handled within formal limited-access control systems established by the Director of National Intelligence.

8. When the vulnerability of, or threat to, specific classified information is exceptional; and the normal criteria for determining eligibility for access to classified information are insufficient to protect the information from unauthorized disclosure, the United States may establish “SPECIAL ACCESS PROGRAMS” (SAPs) to further protect the classified information. A SAP limits the number of persons who will have access, in order to further protect the information.

9. Classified information, of any designation, may be shared only with persons determined by an appropriate United States government official to be eligible for access, and who possess a “need to know.” If a person is not eligible to receive classified information, classified information may not be disclosed to that person. In order for a foreign government to

receive access to classified information, the originating United States agency must determine that such release is appropriate.

10. As used by those who engage in espionage activities:

a. The term “dead drop” refers to a prearranged location used for clandestine exchange of packages, messages, and payments. Dead drops are used to avoid meetings which can draw attention to the connection between an intelligence officer and an agent.

b. The term “clean phone” typically refers to a disposable, pre-paid cellular telephone that cannot be traced to the intelligence officer or agent.

11. A “false flag” denotes an undercover operation in which a United States law enforcement officer poses as an intelligence operative of a foreign country. The purpose of a false flag is to determine whether a suspected spy intends to or has committed espionage against the United States.

Defendant’s Position of Trust With the United States

12. NOZETTE was born on May 20, 1957, in Chicago, Illinois.

13. NOZETTE received a Ph.D. in Planetary Sciences from the Massachusetts Institute of Technology in 1983.

14. NOZETTE worked at the White House on the National Space Council, Executive Office of the President, from approximately 1989 through 1990.

15. NOZETTE assisted with the development of the Clementine bi-static radar experiment which purportedly discovered water on the south pole of the moon. NOZETTE’s Clementine concept, which is on exhibit at the National Air and Space Museum in Washington, D.C., was later hailed as the vanguard of the new “faster, cheaper, better” revolution in space

exploration.

16. NOZETTE worked as a physicist in the "O Division," Advanced Concepts Group, at the U.S. Department of Energy's (DOE) Lawrence Livermore National Laboratory from approximately 1990 to 1999, where he designed highly advanced technology. At DOE, defendant NOZETTE held a special security clearance, referred to as a DOE "Q" clearance. Q clearance is a DOE security clearance equivalent to the United States Department of Defense Top Secret and Critical Nuclear Weapon Design Information clearances. DOE clearances apply to access to information specifically relating to atomic or nuclear-related materials ("Restricted Data" under the Atomic Energy Act of 1954).

17. NOZETTE was the President, Treasurer and Director of the Alliance for Competitive Technology (ACT), a non-profit corporation that he organized in March 1990, under Section 501(c)(3) of the Internal Revenue Code, for the stated purpose of serving "the national and public interest by conducting scientific research and educational activities aimed at expanding the utilization of National and Government Laboratory resources."

18. Between approximately January 2000 and February 2006, NOZETTE, through his company ACT, entered into agreements with several United States Government agencies to develop highly advanced technology. NOZETTE performed some of this research and development at the U.S. Naval Research Laboratory (NRL) in Washington, D.C.; the Defense Advanced Research Projects Agency (DARPA) located in Arlington, Virginia; and the National Aeronautics and Space Administration (NASA) Goddard Space Flight Center located in Greenbelt, Maryland.

19. DARPA is the central research and development office for the U.S. Department of Defense. DARPA's mission is to maintain the technological superiority of the U.S. military

and to prevent technological surprise from harming our national security.

20. NRL is a research laboratory that conducts scientific research and advanced technological development for the U.S. Navy and Marine Corps.

21. From approximately 1989 through 2006, NOZETTE held security clearances as high as TOP SECRET. During that time period, NOZETTE had regular, frequent access to classified information and documents related to the national defense of the United States.

22. In consideration of his being granted access to classified information, defendant NOZETTE signed nondisclosure agreements with the United States on at least five occasions. Specifically:

a. On or about October 3, 2002, NOZETTE signed a Classified Information Nondisclosure Agreement in which he acknowledged that:

. . . I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of classified information by me could cause damage or irreparable injury to the United States or could be used to advantage by a foreign nation.

. . . I have been advised that any unauthorized disclosure of classified information by me may constitute a violation, or violations, of United States criminal laws including the provisions of Sections 641, 793, 794 798, 952 and 1924, Title 18 United States Code . . . I recognize that nothing in this Agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.

. . . I understand that all classified information to which I have access or may obtain access by signing this Agreement is now and will remain the property of, or under the control of the United States Government unless and until otherwise determined by an authorized official or final ruling of a court of law. I agree that I shall return all classified materials which have, or may come into my possession or for which I am responsible because of such access . . . upon the conclusion of my employment or other relationship with the Department or Agency that last granted me a security clearance or that provided me access to classified information.

b. On or about September 16, 2004, NOZETTE signed a Sensitive

Compartmented Information Nondisclosure Agreement in which he acknowledged that:

. . . I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of SCI, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information or material have been approved for access to it, and I understand these procedures.

. . . I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of SCI by me could cause irreparable injury to the United States or be used to advantage by a foreign nation. I hereby agree that I will never divulge anything marked as SCI or that I know to be SCI to anyone who is not authorized to receive it without prior written authorization from the United States Government department or agency (hereinafter Department or Agency) that last authorized my access to SCI. I understand that it is my responsibility to consult with appropriate management authorities in the Department or Agency that last authorized my access to SCI, whether or not I am still employed by or associated with that Department or Agency or a contractor thereof, in order to ensure that I know whether information or material within my knowledge or control that I have reason to believe might be SCI, or related to or derived from SCI, is considered by such Department or Agency to be SCI. I further understand that I am also obligated by law and regulation not to disclose any classified information or material in an unauthorized fashion.

. . . I have been advised that . . . any unauthorized disclosure of SCI by me may constitute violations of United States criminal laws, including the provisions of Sections 793, 794, 798, and 952, Title 18, United States Code . . .

c. On or about August 23, 2005, NOZETTE signed another SCI

Nondisclosure Agreement, in which he reaffirmed that he had received security indoctrinations and understood, among other things, that he had been advised that the direct or indirect unauthorized disclosure by him of SCI information “could cause irreparable injury to the United States, and be used to advantage by a foreign nation,” and pledged that “I will never divulge anything marked as SCI or that I know to be SCI to anyone who is not authorized to receive it . . .” He also re-acknowledged that he had been advised that such unauthorized disclosure could constitute violations of criminal laws including Title 18, United States Code, Section 794.

23. On or about March 17, 2006, NOZETTE was notified by the United States government that his access to SCI had been suspended and he was reminded of his continuing obligation to comply with the terms of the Nondisclosure Agreements he had signed.

24. Between in or about November 1998 through January 2008, NOZETTE acted as a technical consultant for an aerospace company that was wholly owned by the Government of the State of Israel.

25. Between in or about November 1998 through January 2008, the aerospace company requested that NOZETTE provide technical data. Approximately once a month, representatives of the aerospace company proposed questions, or taskings, to NOZETTE. NOZETTE answered the aerospace company's questions and, in return, NOZETTE received regular payments from the company, totaling approximately \$225,000.

26. On or about January 6, 2009, NOZETTE traveled to a different foreign country (foreign country A), via Dulles International Airport. Upon his departure from Dulles, a Transportation Security Agency Security Officer inspected NOZETTE's personal belongings and noted that NOZETTE had two computer "thumb" drives in his possession.

27. On or about January 28, 2009, upon his return to the United States from foreign country A, an officer for the United States Customs and Border Patrol (CBP) conducted a thorough search of NOZETTE's baggage and carry-on luggage. The CBP officer could not locate the thumb drives that had been in NOZETTE's possession when he had left the United States.

28. Prior to Nozette's January 2009 travel to foreign country A, NOZETTE informed a colleague that if the United States government tried to "put him in jail" [based on an unrelated criminal offense], NOZETTE would move from the United States to Israel or foreign country A, and "tell them everything" he knows.

The Undercover Operation

29. On September 3, 2009, NOZETTE was contacted via telephone by an individual purporting to be an Israeli intelligence officer, but who was, in fact, an undercover employee of the FBI (UCE)¹. During that call, NOZETTE agreed to meet with the UCE that day on Connecticut Avenue, N.W. in front of a major hotel in Washington, D.C.

30. Later that day, NOZETTE met with the UCE and had lunch in the restaurant of the hotel. During the lunch, NOZETTE demonstrated his willingness to work for Israeli intelligence, as illustrated by the following conversation:

UCE:I'll just say it real quick and then we'll just move on. Quick, I wanna clarify something from the start. And I don't say it very often, but umm, I work for Israeli Intelligence...

NOZETTE: Mm-hmm

UCE:...Agency known here as Mossad.

NOZETTE: Mm-hmm

UCE: So from now on I'm not gonna say this. But if I say service...

NOZETTE: Mm-hmm

UCE:so you know what that, what it is. But I just wanna be sure, I'll let it out so we don't have any ambiguity later on. But....

NOZETTE:....Mm-hmm

UCE: How you doin'?

NOZETTE: Good. Happy to be of assistance.

31. After lunch in the hotel restaurant, NOZETTE and the UCE retired to a hotel suite to continue their discussion. During the conversation, NOZETTE informed the UCE:

¹This complaint does not allege that the Government of the State of Israel or anyone acting on its behalf committed any offense under the laws of the United States.

NOZETTE: I haven't been, I haven't, um, been involved in a classified work for the last couple of years.

UCE: Okay.

NOZETTE: But I had everything.

UCE: Okay.

NOZETTE: And I had all, all the way to Top Secret SCI, I had nuclear....

UCE: That's prior to a couple of years ago.

NOZETTE: Yeah.

UCE: Is that what you...

NOZETTE: Yeah. And I had it, uh, I had it w-, I had all the nuclear clearances. I had a whole raft of...

UCE: Okay.

NOZETTE: ...special access.

UCE: Um...

NOZETTE: Uh, so any that the U.S. has done in space I've seen.

32. The UCE then asked NOZETTE if he would be willing to provide answers to questions about United States satellite information:

UCE: [A]nswers to those questions. And, uh, so if you were to give me those answers. I mean what is it that, you know, what would you like in return? Is there anything?

NOZETTE: Oh, you could pay me.

33. The UCE explained to NOZETTE that the "Mossad" had arranged for a "dead drop" communication system so that NOZETTE could pass information to the "Mossad" in a Post Office Box. The UCE also provided NOZETTE with a "clean phone" so that NOZETTE could send text messages or leave voicemail messages for the UCE.

34. NOZETTE made the following statements to the UCE:

NOZETTE: Well okay. So let me get to the bottom line.

UCE: Yes.

NOZETTE: So actually there are two things that . . .

UCE: Yes please....

NOZETTE: A couple things I want.

...

NOZETTE: But you want me to be a regular, continuing asset?

UCE: Right.

NOZETTE: Which I'm willing to do.

...

NOZETTE: I don't get recruited by Mossad every day. I knew this day would come by the way.

UCE: How's that?

NOZETTE: (Laughs) I just had a feeling one of these days.

UCE: Really?

NOZETTE: I knew you guys would show up.

UCE: How you, um . . .

NOZETTE: (Laughs) And I was amazed it didn't happen longer . . .

UCE: Hm. I'm s-, I'm sure my, back at home, one of the few people had actually said it, but I, people did say, 'I'm surprised you guys didn't come sooner than this but, um, um, but you . . .'

NOZETTE: I thought I was working for you already. I mean that's what I always thought, [the foreign company] was just a front.

...

NOZETTE: Now the second thing.

UCE: Yes.

NOZETTE: I would like, I don't know if it's going cost anything, but I have no idea how to, or effectively, bureaucratically do it. So my parents are Jewish, right?

UCE: Okay, yeah.

NOZETTE: So I have a right, I theoretically have the right of return.

UCE: Okay. To the state, yes.

NOZETTE: Right. How could I get an Israeli passport?

NOZETTE: Because if I'm gonna work I wouldn't mind having another base of operations . . .

UCE: Uh-huh.

NOZETTE: . . . outside the US to work out of.

UCE: Okay.

NOZETTE: You know, If I'm going to do other work internationally in space I wouldn't mind having to, uh, having a, alternative, uh, passport.

35. NOZETTE and the UCE met again on September 4, 2009, in the same hotel suite at approximately 11:00 am. During this encounter, NOZETTE assured the UCE that although he no longer had legal access to any classified information at any United States government facility, he could, nonetheless, recall the classified information to which he had been granted access. NOZETTE said, **"It's in my"** head [pointing, indicating his head].

36. However, NOZETTE initially claimed to be wary of providing any classified information to the UCE. For example, when the UCE implied that the "Mossad" was only interested in obtaining sensitive United States government information from NOZETTE,

NOZETTE replied, **"I'll show you mine, you show me yours."**

37. NOZETTE's purported concerns were soon assuaged, once he became satisfied in the belief that he was actually dealing with a foreign intelligence officer. NOZETTE remarked, **"So but, you know, I'm trusting you. I'm just thinking that this is a, although the post office box deal, it sounds, that seems kind of Mossad-like . . ."**

38. NOZETTE later agreed not only to communicate classified information to the "Mossad," but also to be recorded while he recited the classified information. NOZETTE told the UCE, **"So one good thing I can easily do for you is like what we're doing here . . . is we can just talk . . . and you can have people come and we can chat and they can like, record it or something."**

39. NOZETTE later offered, **"I can always come over there,"** meaning Israel, to disclose the classified information. NOZETTE then informed the UCE, **"I always fly business class . . . Have them pay for business class."**

40. Throughout the meeting with the UCE, NOZETTE repeatedly asked when he could expect to receive his first payment from the "Mossad." NOZETTE specified that although **"cash is fine,"** he preferred to receive cash amounts **"under ten thousand . . . per lump you can handle here, they don't report it."**

41. NOZETTE then assured the UCE that he knew **"how to handle cash . . . you buy consumables . . . cash is good for anything . . . you eat it, drink it or screw it."**

42. At the conclusion of the second meeting, NOZETTE informed the UCE, **"Well I should tell you my first need is that they should figure out how to pay me . . . they don't expect me to do this for free."**

43. On or about September 10, 2009, undercover FBI agents left a letter in the “dead drop” facility for NOZETTE. In the letter, the FBI asked NOZETTE to answer a list of questions concerning United States satellite information. FBI agents also provided signature cards, in NOZETTE’s true name and an alias, for NOZETTE to sign and asked NOZETTE to provide four passport sized photographs for the Israeli passport NOZETTE requested. The FBI agents also left \$2,000 cash for NOZETTE in the “dead drop” facility which NOZETTE retrieved the same day, along with the questions, signature cards, and a thumb drive.

44. On or about September 16, 2009, NOZETTE was captured on videotape leaving a manila envelope in the “dead drop” Post Office Box in the District of Columbia.

45. On or about September 17, 2009, the FBI agents retrieved the sealed manila envelope NOZETTE had dropped off. Inside the envelope were the following items:

- a. The signed passport signature cards (in true name and in an alias);
- b. Four passport-sized photographs of NOZETTE;
- c. One page document containing “Answers” to the questions left by the FBI undercover agents on September 10, 2009, which employed a prearranged code used to identify the most sensitive information;
- d. The document containing the questions left by the FBI undercover agents on September 10, 2009; and
- e. An encrypted computer “thumb drive” or “memory stick.”

46. One of the “Answers” provided by NOZETTE contained information classified as SECRET/SCI which related to the national defense, in that it directly concerned classified aspects and mission capabilities of a prototype overhead collection system, which disclosure could negate the ability to support United States military and intelligence operations.

47. In addition to disclosing SECRET/SCI information, NOZETTE offered to reveal additional classified information that directly concerned nuclear weaponry, military spacecraft or satellites, and other major weapons systems. Nozette stated:

Held a DOE Q clearance from 1990-2000, which involved insight into all aspects of nuclear weapons programs. Held TS/SI/TK/B/G clearance 1998-2006, . . . Held at least 20+ SAP . . . from 1998 -2004 . . . Full understanding of these programs would require interaction in the homeland . . .

. . . These are among the most sensitive subjects and it will have to be recreated from memory over some time.

. . . Your token is most appreciated and at the level, which is reasonable for each weekly interval given the support requested.

48. Also on or about September 17, 2009, undercover FBI agents left a second communication and an encrypted thumb drive in the "dead drop" facility for NOZETTE. In the letter, the FBI asked NOZETTE to answer another list of questions concerning United States satellite information. The FBI also left a cash payment of \$ 9,000 in the Post Office Box. NOZETTE retrieved the questions and the money from the "dead drop" Post Office Box later that same day.

49. On or about October 1, 2009, NOZETTE was filmed on videotape leaving a manila envelope in the "dead drop" Post Office Box in the District of Columbia.

50. On or about October 1, 2009, the FBI agents retrieved the sealed manila envelope left by NOZETTE.

51. Inside the envelope, FBI agents discovered the encrypted thumb drive that was provided to NOZETTE on September 17, 2009, which included another set of "Answers" from NOZETTE. The "Answers" contained information classified as TOP SECRET/SCI and other information classified as SECRET/SCI. This classified information related to the national defense,

in that it directly concerned United States satellites, early warning systems, means of defense or retaliation against large-scale attack, communications intelligence information, and major elements of defense strategy.

52. In addition to providing the TOP SECRET/SCI and SECRET/SCI information, NOZETTE wrote:

The holdings are appreciated and another token would be appropriate as the information density is increasing. It is important to try to specify what is needed as has been done. Please bear in mind that an extremely valuable (handler) piece of information has been provided . . . Assuming the quality is moving in the correct direction a thumb drive 8 G or more is needed.

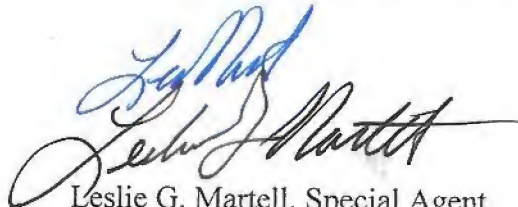
REQUEST FOR SEALING

53. Because the investigation is continuing and disclosure of some of the details of this affidavit may compromise subsequent investigative measures to be taken in this case, cause the suspect to flee, cause the suspect to destroy evidence, or otherwise jeopardize the investigation, I respectfully request that this affidavit be sealed until the subject is arrested.

CONCLUSION

54. Based on the facts set forth above, and on my experience and training in investigating cases involving violations of federal law and other experienced agents with whom I have consulted, there is probable cause to believe that on or about September 16, 2009 and again on or about October 1, 2009, STEWART DAVID NOZETTE, in the District of Columbia, knowingly and willfully attempted to communicate, deliver, and transmit to a foreign government, to wit the Government of the State of Israel, and representatives, officers, and agents thereof, both directly and indirectly, classified documents and information relating to the national defense of the United States, specifically, information classified as TOP SECRET/SCI and SECRET/SCI, with intent and reason to believe that said documents and information would be used to the injury of the United

States and to the advantage of a foreign nation, namely, the Government of the State of Israel, in violation of 18 U.S.C. § 794(a).


Leslie G. Martell, Special Agent
Federal Bureau of Investigation

SWORN TO AND SUBSCRIBED BEFORE ME THIS 16th DAY OF OCTOBER, 2009.


UNITED STATES MAGISTRATE JUDGE